

REMARKS

Reconsideration of the application is respectfully requested.

In rejecting claims 5 and 6, the Office points to the general teaching in WO 97/02343 on page 12 that antifreeze peptides can be used in ice cream.

With respect to the rejection based on 35 USC Section 102(f), it is respectfully submitted that the Office has not provided reasoning why the reference, even if prior art, would be considered anticipatory. The present specification cites a number of parameters relevant to the aspect ratio, including rate of freezing the product, the mobility of the product during freezing, the presence and amount of ingredients and the nature and amount of AFPs present. Anticipation is not a matter of mere possibilities. It is submitted that the Office has not come forward with reasoning why the presently recited aspect ratios would be inherent in the disclosure by WO 97/02343 of ice cream containing AFPs, particularly given the numerous parameters cited herein as influencing the aspect ratio.

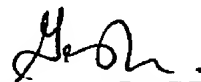
As to the rejection under Section 102(f)/103, it is submitted that a prima facie case of obviousness has not been established based upon the '343 reference. Even if '343 were citable as prior art, the Office points to no teaching in '343 to select any particular aspect ratio. Rather, the Office summarily dismisses the presently recited aspect ratio as a "result effective variable." The general disclosure on page 13 of '343 concerning influencing of the size and shape characteristics of ice, in particular regrowth, would not lead one of ordinary skill to the presently recited ratios. It is submitted that this rejection improperly relies on applicants' present disclosure. Therefore, even if '343 were properly citable, which is not acknowledged, the Office has not found in '343 an

appropriate basis for an obviousness rejection.

For the record, '343 is a member of the same patent family as pending US application SN 08/673,876. An IDS ensuring that the application is formally made of record herein will follow shortly.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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